

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

KENNETH FINLEY

Plaintiff :  
v. : 3:12-CV-2194  
: (JUDGE MARIANI)  
PENNSYLVANIA DEPARTMENT OF :  
CORRECTIONS, et al. :  
Defendants :  
:

ORDER

AND NOW, THIS 30TH DAY OF APRIL, 2015, upon consideration of the Motion for Summary Judgment (Doc. 21) by Defendants, Commonwealth of Pennsylvania Department of Corrections, SCI Waymart, Captain Patrick Herbert, and Superintendent Joseph Nish, and all accompanying briefs, **IT IS HEREBY ORDERED THAT** Defendants' Motion for Summary Judgment (Doc. 21) is **GRANTED IN PART AND DENIED IN PART**; to wit:

1. The motion is **GRANTED IN PART AND DENIED IN PART** as to Count I (Violation of Section 504 of the Rehabilitation Act of 1974) of Plaintiff's Complaint:
  - a. The motion is **GRANTED** with respect to Defendants Herbert and Nish and judgement is entered **IN FAVOR OF** these Defendants and **AGAINST** Plaintiff on this Count.
  - b. The motion is **DENIED** with respect to Defendants Commonwealth of Pennsylvania Department of Corrections and SCI Waymart.

2. The motion is **DENIED** as to Count II (Violations of FMLA) of Plaintiff's Complaint.

However, summary judgment as to liability only shall be entered **IN FAVOR OF** the plaintiff and **AGAINST** the defendants on Plaintiff's FMLA interference claim. The remedies to which Plaintiff may be entitled present issues for trial.

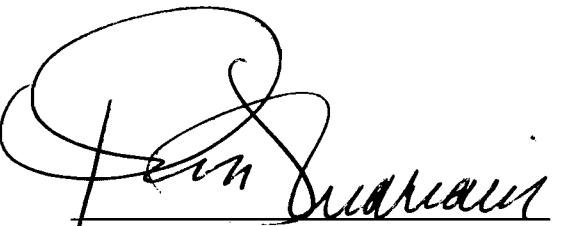
3. The motion is **DENIED** as to Count III (Violations of FMLA - Retaliation) of Plaintiff's Complaint.

4. The motion is **GRANTED** as to Count IV (Violation of PHRA) and judgment is entered **IN FAVOR OF** the Defendants and **AGAINST** Plaintiff on this Count.

5. The motion is **GRANTED** with respect to Plaintiff's claim of Constructive Discharge and judgment is entered **IN FAVOR OF** the Defendants and **AGAINST** Plaintiff on this claim.

6. Defendants' motion for qualified immunity is **DENIED**.

7. A telephone scheduling conference will be held on **Wednesday, May 6, 2015, at 2:15 p.m.** Counsel for Plaintiff is responsible for arranging the call to (570) 207-5750, and all parties should be ready to proceed before the undersigned is contacted.



Robert D. Mariani  
United States District Judge